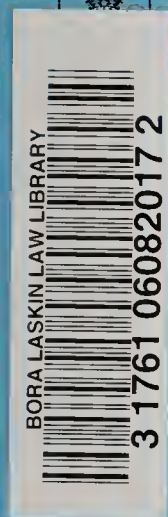




UNIVERSITY OF TORONTO  
FACULTY OF LAW



# International Humanitarian Law

## Course Materials

Winter 2012  
Adjunct Professor Jennifer Orange

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FACULTY OF LAW  
UNIVERSITY OF TORONTO

# International Humanitarian Law

## Course Materials

Winter 2012

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# International Humanitarian Law (Laws of War) Syllabus

Adjunct Professor Jennifer Orange  
jenniferorange@gmail.com

Second Term: 3 credits; 2 hours

Schedule: (W: 10:30 - 12:20)

International Humanitarian Law sets out rules that aim to limit the effects of armed conflict. This course will seek to explore the evolution of the laws of war from their origin to their modern day application. Students will be introduced to the law's main sources (the Hague and Geneva Conventions, findings of international criminal tribunals), key concepts (international/non-international conflicts, combatants/non-combatants, protected persons) and the principles which aim to limit the means and effect of combat. The course will examine how international humanitarian law is implemented, as well as the availability and efficacy of remedies. We will draw upon case studies, such as the U.S. interpretation of the Geneva Conventions post 9-11 and the use of gender-based violence in armed conflict, to analyze the potential and the limits of the humanitarian law model.

**Evaluation:** A research paper approximately 6,250 to 7,500 words in length (80%) and class participation (20%). Class participation includes attendance and input into the discussion both in class and on blackboard.

<b>Class 1 Just war</b>	
<ul style="list-style-type: none"><li>• Francois Bugnion, "Just wars, wars of aggression and international humanitarian law", <i>International Review of the Red Cross</i>, September 2002, No. 847, Vol. 84, pp. 3-17 <a href="http://www.icrc.org/eng/assets/files/other/irrc-847-2002-bugnion-ang.pdf">http://www.icrc.org/eng/assets/files/other/irrc-847-2002-bugnion-ang.pdf</a></li></ul>	<b>1</b>
<ul style="list-style-type: none"><li>• Robert Kolb, "Origin of the twin terms jus ad bellum/jus in bello", <i>International Review of the Red Cross</i>, October 31, 1997, No. 320, 1997, pp.553-562 [footnotes omitted]</li></ul>	<b>16</b>
<ul style="list-style-type: none"><li>• ICC definition of the crime of aggression: <a href="http://www.iccnw.org/?mod=aggression">http://www.iccnw.org/?mod=aggression</a></li></ul>	<b>20</b>
<b>Class 2 Self-Defence</b>	
<ul style="list-style-type: none"><li>• Dinstein, Yoram, <i>War, Aggression and Self-Defence</i>, (Cambridge: Cambridge U. Press, 2005) pp. 175-182</li></ul>	<b>21</b>
<ul style="list-style-type: none"><li>• <i>Legality of the Threat or Use of Nuclear Weapons</i>, Advisory Opinion, I.C.J. Reports 1996, p. 226 [summary of the judgment and then paras. 37-50 of the judgment]</li></ul>	<b>29</b>
<ul style="list-style-type: none"><li>• Frederic L. Kirgis, "Pre-emptive Action to Forestall Terrorism", <i>ASIL Insights</i>,</li></ul>	<b>39</b>



<p>June 2002. <a href="http://www.asil.org/insigh88.cfm">http://www.asil.org/insigh88.cfm</a></p> <ul style="list-style-type: none"> <li>Philip Alston, “Sovereignty issues and States’ invocation of the right to self-defence” in Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on targeted killings, 28 May 2010, A/HRC/14/24/Add.6, pp. 12-15</li> </ul>	41
<b>Class 3 Responsibility to Protect</b>	
<ul style="list-style-type: none"> <li>Kofi Annan, “Toward a New Definition of Sovereignty” in <i>Ethics of War: classic and contemporary readings</i>, Gregory M. Reichberg, Henrik Syse, and Endre Begby eds. (Oxford: Blackwell, 2006) pp. 683-693</li> </ul>	45
<ul style="list-style-type: none"> <li>Eve Massingham, “Military intervention for humanitarian purposes: Does the Responsibility to Protect doctrine advance the legality of the use of force for humanitarian ends?”, <i>International Review of the Red Cross</i>, December 2009, Vol, 91, No. 876,. <a href="http://www.icrc.org/eng/assets/files/other/irrc-876-massingham.pdf">http://www.icrc.org/eng/assets/files/other/irrc-876-massingham.pdf</a></li> </ul>	51
<u>Other resources</u>	
<ul style="list-style-type: none"> <li>International Commission on Intervention and State Sovereignty, “Summary of the Responsibility to Protect”, 2000 <a href="http://responsibilitytoprotect.org/R2PSummary.pdf">http://responsibilitytoprotect.org/R2PSummary.pdf</a></li> <li>International Coalition of the Responsibility to Protect, “Summary of the Report of the Secretary-General on Implementing the Responsibility to Protect” 16 February 2009 <a href="http://www.responsibilitytoprotect.org/files/ICRtoP%20Summary%20of%20SG%20report.pdf">http://www.responsibilitytoprotect.org/files/ICRtoP%20Summary%20of%20SG%20report.pdf</a></li> </ul>	
<b>Class 4 International vs. Non-International Armed Conflict</b>	
<ul style="list-style-type: none"> <li>Richard Kolb and Richard Hyde, <i>An Introduction to the International Law of Armed Conflicts</i>, (Oxford: Hart, 2008), pp. 65-71 and 257-267</li> </ul>	80
<ul style="list-style-type: none"> <li>Gary Solis, <i>The Law of Armed Conflict</i>, (New York: Cambridge U. Press, 2010), pp. 149-164</li> </ul>	84
<ul style="list-style-type: none"> <li>Michael W. Lewis, “International Myopia: <i>Hamdan</i>’s Shortcut to “Victory”, 42 <i>U. Richmond L.Rev.</i> (2008) at 687</li> </ul>	93
<u>Other resources</u>	
<ul style="list-style-type: none"> <li><i>Hamdan v. Rumsfeld</i>, 548 U.S. 557 (2006), <a href="http://www.supremecourt.gov/opinions/05pdf/05-184.pdf">http://www.supremecourt.gov/opinions/05pdf/05-184.pdf</a></li> </ul>	

## **Class 5 Problems in identifying locale: Cyber Warfare**

- Michael N. Schmitt, et al. "Computers and War: The Legal Battlespace", International Humanitarian Law Research Initiative, Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27, 2004  
[http://ihl.ihlresearch.org/data/n\\_0002/resources/live/schmittetal.pdf](http://ihl.ihlresearch.org/data/n_0002/resources/live/schmittetal.pdf) 116
- Marco Roscini, World Wide Warfare—*Jus ad bellum* and the Use of Cyber Force, *Max Planck Yearbook of United Nations Law*, Vol. 14, 2010, 85-130 135

## **Class 6 Combatants vs non-combatants**

- Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, "The Concept of Civilian", ICRC, May 2009, pp. 20-26 [http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0990.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0990.pdf) 181
- Steiner, Alston and Goodman, *International Human Rights in Context: Law, Politics, Morals: text and materials*, 3<sup>rd</sup> ed. (Oxford: Oxford University Press, 2008), pp. 61-75 [*The Paquette Habana*] 188

### **"Enemy Combatants"**

- William Haynes, "Enemy Combatants", Council on Foreign Relations, December 12, 2002 <http://www.cfr.org/publication.html?id=5312> 196
- Evan Perez and Jess Bravin, 'Enemy Combatant' Label Is Dropped for Detainees, Wall Street Journal, March 14, 2009  
<http://online.wsj.com/article/SB123697422076922961.html> 200

## **Class 7 Who are the participants in armed conflict?**

- Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, "The Concept of Direct Participation in Hostilities", ICRC May 2009, pp. 41-64  
[http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0990.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_0990.pdf) 202
- *Prosecutor v. Dusko Tadic*, ICTY, IT-94\_1\_T Opinion and Judgment (7 May 1997) excerpted from Gary Solis, *The Law of Armed Conflict*, (Cambridge U. Press, NY: 2010), pp. 332-333 226
- *Prosecutor v. Kunarac, et al*, ICTY, IT-96-23 & 23/1-A (12 June 2002) excerpted from Gary Solis, *The Law of Armed Conflict*, (Cambridge U. Press, 226



NY: 2010), pp. 333-335

- Film: *You Don't Like the Truth: 4 Days Inside Guantanamo*  
<http://www.youdontlikethetruth.com/>

## **Class 8 Military Necessity, Unnecessary Suffering, Proportionality**

- Gary Solis, *The Law of Armed Conflict*, (Cambridge U. Press, NY: 2010), pp. 258-286 **228**
- “Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia”, paras. 57-79 **243**
- HRW report on proportionality in Lebanon: Why they Died:  
<http://www.hrw.org/node/10734/section/5> **252**
- Philip Alston, “The use of drones for targeted killing” and “The requirements of transparency and accountability” in Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on targeted killings, 28 May 2010, A/HRC/14/24/Add.6, pp. 24-29 **263**

## **Class 9 Methods and Means of Warfare**

- *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, July 8, 1996, ICJ Rep. 1996 in Sassoli & Bouvier, *How Does Law Protect in War*, Vol. 1, ICRC, 1999 **269**
- *Rome Statute* of the ICC, arts. 7 and 8  
<http://untreaty.un.org/cod/icc/statute/romefra.htm> **276**
- Jean-Marie Henckaerts, “Confronting Sexual Violence as a Method of Warfare”, ICRC, 26-06-2008, <http://www.icrc.org/web/eng/siteeng0.nsf/html/sexual-violence-interview-260608> **281**
- U.N. Security Council Resolution 1820, “Women and Peace and Security”, S/RES/1820 (2008), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/391/44/PDF/N0839144.pdf?OpenElement> **284**

**Class 10 POWs, Detention and Prisoner Transfer**

- Prisoners of war and detainees protected under international humanitarian law, 29-10-2010 Overview, ICRC, <http://www.icrc.org/eng/war-and-law/protected-persons/prisoners-war/overview-detainees-protected-persons.htm> 289
- Rule 106. Conditions for Prisoner of War Status, ICRC, [http://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter33\\_rule106](http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter33_rule106) 290
- BC Civil Liberties Association, “History of the BCCLA’s Involvement in Afghan Detainee Issues”, [http://www.bccla.org/antiterrorissue/afghan\\_detainee\\_history.html](http://www.bccla.org/antiterrorissue/afghan_detainee_history.html), accessed November 18, 2011 294
- Marco Sassoli and Marie-Louise Tougas, “International Law Issues Raised by the Transfer of Detainees by Canadian Forces in Afghanistan”, 56:4 McGill L.J. 2011, pp. 959-981 297

**Class 11 Enforcement—during and after armed conflict**

- Kalshoven and Zegveld, Constraints on the Waging of War, ICRC, Geneva, March 2001, pp. 139-154 and 185-201 320
- Ian Brownlie, Principles of Public International Law, 6<sup>th</sup> ed. (Oxford: Oxford University Press), pp. 559-575 353
- Davis et al., “The Crime of Aggression and the International Criminal Court”, The National Legal Eagle, Vol. 17 [2011], Iss. 1, Art. 4, pp 11-13 362

Other resources

- Rome Statute of the ICC <http://untreaty.un.org/cod/icc/statute/romefra.htm>
- Cambodia: <http://www.eccc.gov.kh/en>
- Yugoslavia: <http://www.icty.org/sections/AbouttheICTY>
- Rwanda: <http://www.icttr.org/default.htm>
- Sierra Leone: <http://www.sc-sl.org/>

**Class 12 ICRC and Neutrality**

- Denise Plattner, “ICRC neutrality and neutrality in humanitarian assistance”, International Review of the Red Cross, April 30, 1996, pp. 161-179 365